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JARDINE GOUGIS

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JARDINE GOUGIS,
Plaintiff,

vs.

DUTCH DOOR HAIR SALON LLC;
BARBARA MARIE PODESTA; and
DOES 1 to 10,
Defendants.

Case No.:

COMPLAINT FOR INJUNCTIVE
RELIEF AND DAMAGES FOR DENIAL
OF CIVIL RIGHTS OF A DISABLED
PERSON IN VIOLATIONS OF

1. AMERICANS WITH DISABILITIES
ACT, 42 U.S.C. §12131 et seq.;

2. CALIFORNIA'S UNRUH CIVIL
RIGHTS ACT;

3. CALIFORNIA'S DISABLED
PERSONS ACT;

4. CALIFORNIA HEALTH & SAFETY
CODE;

5. NEGLIGENCE

Plaintiff JARDINE GOUGIS ("Plaintiff") complains of Defendants DUTCH
DOOR HAIR SALON LLC; BARBARA MARIE PODESTA; and DOES 1 to 10
("Defendants") and alleges as follows:

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PARTIES

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2 1. Plaintiff is a California resident with a physical disability. Plaintiff is
3 diagnosed with osteoarthritis on both hips and is substantially limited in her ability to
4 walk. Plaintiff requires the use of a wheelchair at all times when traveling in public.

5 2. Defendants are, or were at the time of the incident, the real property owners,
6 business operators, lessors and/or lessees of the real property for a hair salon ("Business")
7 located at or about 71 E. Foothill Blvd. A, Arcadia, California.

8 3. The true names and capacities, whether individual, corporate, associate or
9 otherwise of Defendant DOES 1 through 10, and each of them, are unknown to Plaintiff,
10 who therefore sues said Defendants by such fictitious names. Plaintiff will ask leave of
11 Court to amend this Complaint when the true names and capacities have been
12 ascertained. Plaintiff is informed and believes, and, based thereon, alleges that each such
13 fictitiously named Defendants are responsible in some manner, and therefore, liable to
14 Plaintiff for the acts herein alleged.

15 4. Plaintiff is informed and believes, and thereon alleges that, at all relevant
16 times, each of the Defendants was the agent, employee, or alter-ego of each of the other
17 Defendants, and/or was acting in concert with each of the other Defendants, and in doing
18 the things alleged herein was acting with the knowledge and consent of the other
19 Defendants and within the course and scope of such agency or employment relationship.

20 5. Whenever and wherever reference is made in this Complaint to any act or
21 failure to act by a defendant or Defendants, such allegations and references shall also be
22 deemed to mean the acts and failures to act of each Defendant acting individually, jointly
23 and severally.

24 **JURISDICTION AND VENUE**

25 6. The Court has jurisdiction of this action pursuant to 28 USC §§ 1331 and
26 1343 for violation of the Americans with Disabilities Act of 1990, (42 USC §12101, *et*
27 *seq.*).
28

1 c. Defendants failed to comply with the federal and state standards for
2 the parking space designated for persons with disabilities. Defendants
3 failed to provide an access aisle with level surface slope.

4 d. Defendants failed to comply with the federal and state standards for
5 the parking space designated for persons with disabilities. Defendants
6 failed to provide a proper accessible route as required, as there was no
7 ramp from the accessible parking space to the rear entrance.

8 14. These barriers and conditions denied Plaintiff full and equal access to the
9 Business and caused Plaintiff difficulty and frustration. Plaintiff wishes to return and
10 patronize the Business; however, Plaintiff is deterred from visiting the Business because
11 her knowledge of these violations prevents her from returning until the barriers are
12 removed.

13 15. Based on the violations, Plaintiff alleges, on information and belief, that
14 there are additional barriers to accessibility at the Business after further site inspection.
15 Plaintiff seeks to have all barriers related to her disability remedied. *See Doran v. 7-*
16 *Eleven, Inc.* 524 F.3d 1034 (9th Cir. 2008).

17 16. In addition, Plaintiff alleges, on information and belief, that Defendants
18 knew that particular barriers render the Business inaccessible, violate state and federal
19 law, and interfere with access for the physically disabled.

20 17. At all relevant times, Defendants had and still have control and dominion
21 over the conditions at this location and had and still have the financial resources to
22 remove these barriers without much difficulty or expenses to make the Business
23 accessible to the physically disabled in compliance with ADDAG and Title 24
24 regulations. Defendants have not removed such barriers and have not modified the
25 Business to conform to accessibility regulations.

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FIRST CAUSE OF ACTION

VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990

18. Plaintiff incorporates by reference each of the allegations in all prior paragraphs in this complaint.

19. Under the Americans with Disabilities Act of 1990 (“ADA”), no individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases, or leases to, or operates a place of public accommodation. *See* 42 U.S.C. § 12182(a).

20. Discrimination, *inter alia*, includes:

- a. A failure to make reasonable modification in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations. 42 U.S.C. § 12182(b)(2)(A)(ii).
- b. A failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in an undue burden. 42 U.S.C. § 12182(b)(2)(A)(iii).
- c. A failure to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities, and transportation barriers in existing vehicles and rail passenger cars used by an

establishment for transporting individuals (not including barriers that can only be removed through the retrofitting of vehicles or rail passenger cars by the installation of a hydraulic or other lift), where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv).

- d. A failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs or to ensure that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities where such alterations to the path or travel or the bathrooms, telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope. 42 U.S.C. § 12183(a)(2).

21. Where parking spaces are provided, accessible parking spaces shall be provided. 1991 ADA Standards § 4.1.2(5); 2010 ADA Standards § 208. One in every eight accessible spaces, but not less than one, shall be served by an access aisle 96 in (2440 mm) wide minimum and shall be designated "van accessible." 1991 ADA Standards § 4.1.2(5)(b). For every six or fraction of six parking spaces, at least one shall be a van accessible parking space. 2010 ADA Standards § 208.2.4.

22. For the parking spaces, access aisles shall be marked with a blue painted borderline around their perimeter. The area within the blue borderlines shall be marked with hatched lines a maximum of 36 inches (914 mm) on center in a color contrasting with that of the aisle surface, preferably blue or white. The words "NO PARKING" shall be painted on the surface within each access aisle in white letters a minimum of 12 inches (305 mm) in height and located to be visible from the adjacent vehicular way. CBC § 11B-502.3.3.

1 23. Here, Defendants failed to provide a proper access aisle as the “NO
2 PARKING” markings and blue hatched lines painted on the parking surface were poorly
3 maintained, resulting in the markings becoming severely deteriorated, hindering
4 visibility.

5 24. The surface of each accessible car and van space shall have surface
6 identification complying with either of the following options: The outline of a profile
7 view of a wheelchair with occupant in white on a blue background a minimum 36” wide
8 by 36” high (914 mm x 914 mm). The centerline of the profile view shall be a maximum
9 of 6 inches (152 mm) from the centerline of the parking space, its sides parallel to the
10 length of the parking space and its lower side or corner aligned with the end of the
11 parking space length or by outlining or painting the parking space in blue and outlining
12 on the ground in white or a suitable contrasting color a profile view of a wheel chair with
13 occupant. See CBC § 11B-502.6.4, et seq.

14 25. Here, Defendants failed to maintain the paint of the International Symbol of
15 Accessibility on the surface as required.

16 26. Under the 1991 Standards, parking spaces and access aisles must be level
17 with surface slopes not exceeding 1:50 (2%) in all directions. 1991 Standards § 4.6.2.
18 Accessible parking spaces shall be at least 96 in (2440 mm) wide. Parking access aisles
19 shall be part of an accessible route to the building or facility entrance and shall comply
20 with 4.3. Two accessible parking spaces may share a common access aisle. Parked
21 vehicle overhangs shall not reduce the clear width of an accessible route. Parking spaces
22 and access aisles shall be level with surface slopes not exceeding 1:50 (2%) in all
23 directions. 1991 Standards § 4.6.3.

24 27. Here, the access aisle is not level with the parking spaces. Under the 2010
25 Standards, access aisles shall be at the same level as the parking spaces they serve.
26 Changes in level are not permitted. 2010 Standards § 502.4. “Access aisles are required
27 to be nearly level in all directions to provide a surface for transfer to and from vehicles.”
28 2010 Standards § 502.4 Advisory. Id. No more than a 1:48 slope is permitted.

35. California Civil Code § 52 states, “Whoever denies, aids or incites a denial, or make any discrimination or distinction contrary to Section 51, 515, or 51.6, is liable for each and every offense for the actual damages, and any amount that may be determined by a jury, or a court sitting without a jury, up to a maximum of three times the amount of actual damage but in no case less than four thousand dollars (\$4,000) and any attorney’s fees that may be determined by the court in addition thereto, suffered by any person denied the rights provided in Section 51, 51.5, or 51.6.

36. California Civil Code § 51(f) specifies, “a violation of the right of any individual under federal Americans with Disabilities Act of 1990 (Public Law 101-336) shall also constitute a violation of this section.”

37. The actions and omissions of Defendants alleged herein constitute a denial of full and equal accommodation, advantages, facilities, privileges, or services by physically disabled persons within the meaning of California Civil Code §§ 51 and 52. Defendants have discriminated against Plaintiff in violation of California Civil Code §§ 51 and 52.

38. The violations of the Unruh Civil Rights Act caused Plaintiff to experience difficulty, discomfort, or embarrassment. The Defendants are also liable for statutory damages as specified in California Civil Code §55.56(a)-(c).

THIRD CAUSE OF ACTION

VIOLATION OF CALIFORNIA DISABLED PERSONS ACT

39. Plaintiff incorporates by reference each of the allegations in all prior paragraphs in this complaint.

40. California Civil Code § 54.1(a) states, “Individuals with disabilities shall be entitled to full and equal access, as other members of the general public, to accommodations, advantages, facilities, medical facilities, including hospitals, clinics, and physicians’ offices, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motorbuses, streetcars, boats, or any other public conveyances or modes of transportation (whether private, public, franchised, licensed, contracted, or otherwise

provided), telephone facilities, adoption agencies, private schools, hotels, loading places, places of public accommodations, amusement, or resort, and other places in which the general public is invited, subject only to the conditions and limitations established by law, or state or federal regulation, and applicable alike to all persons.

41. California Civil Code § 54.3(a) states, “Any person or persons, firm or corporation who denies or interferes with admittance to or enjoyment of public facilities as specified in Sections 54 and 54.1 or otherwise interferes with the rights of an individual with a disability under Sections 54, 54.1 and 54.2 is liable for each offense for the actual damages, and any amount as may be determined by a jury, or a court sitting without a jury, up to a maximum of three times the amount of actual damages but in no case less than one thousand dollars (\$1,000) and any attorney’s fees that may be determined by the court in addition thereto, suffered by any person denied the rights provided in Section 54, 54.1, and 54.2.

42. California Civil Code § 54(d) specifies, “a violation of the right of an individual under Americans with Disabilities Act of 1990 (Public Law 101-336) also constitute a violation of this section, and nothing in this section shall be construed to limit the access of any person in violation of that act.

43. The actions and omissions of Defendants alleged herein constitute a denial of full and equal accommodation, advantages, and facilities by physically disabled persons within the meaning of California Civil Code § 54. Defendants have discriminated against Plaintiff in violation of California Civil Code § 54.

44. The violations of the California Disabled Persons Act caused Plaintiff to experience difficulty, discomfort, and embarrassment. The Defendants are also liable for statutory damages as specified in California Civil Code §55.56(a)-(c).

FOURTH CAUSE OF ACTION

CALIFORNIA HEALTH & SAFETY CODE § 19955, et seq.

45. Plaintiff incorporates by reference each of the allegations in all prior paragraphs in this complaint.

1 46. Plaintiff and other similar physically disabled persons who require the use of
2 a wheelchair are unable to use public facilities on a “full and equal” basis unless each
3 such facility is in compliance with the provisions of California Health & Safety Code §
4 19955 et seq. Plaintiff is a member of the public whose rights are protected by the
5 provisions of California Health & Safety Code § 19955 et seq.

6 47. The purpose of California Health & Safety Code § 1995 et seq. is to ensure
7 that public accommodations or facilities constructed in this state with private funds
8 adhere to the provisions of Chapter 7 (commencing with Section 4450) of Division 5 of
9 Title 1 of the Government Code. The code relating to such public accommodations also
10 require that “when sanitary facilities are made available for the public, clients, or
11 employees in these stations, centers, or buildings, they shall be made available for
12 persons with disabilities.

13 48. Title II of the ADA holds as a “general rule” that no individual shall be
14 discriminated against on the basis of disability in the full and equal enjoyment of goods
15 (or use), services, facilities, privileges, and accommodations offered by any person who
16 owns, operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a).
17 Further, each and every violation of the ADA also constitutes a separate and distinct
18 violation of California Civil Code §§ 54(c) and 54.1(d), thus independently justifying an
19 award of damages and injunctive relief pursuant to California law, including but not
20 limited to Civil Code § 54.3 and Business and Professions Code § 17200, et seq.

21 **FIFTH CAUSE OF ACTION**

22 **NEGLIGENCE**

23 49. Plaintiff incorporates by reference each of the allegations in all prior
24 paragraphs in this complaint.

25 50. Defendants have a general duty and a duty under the ADA, Unruh Civil
26 Rights Act and California Disabled Persons Act to provide safe and accessible facilities
27 to the Plaintiff.
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